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SENATE BILL 2699 By  
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HOUSE BILL 2583  
By Jones, S.

AN ACT to enact the "Health Care Consumer Right-to-Know Act of 1998".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may be cited as the "Health Care Consumer Right-to-Know Act of 1998".

SECTION 2. (a) Health care is a valuable commodity, and the health care consumer needs to make informed decisions when making health care choices. Due to the current trends in health care, patients have a close relationship with their health care provider and must depend on the provider for most of their health care needs. Health care consumers need to know as much as possible before committing their health care to such provider. Likewise current trends make decisions about which managed care organizations to choose equally important to health care consumers. Because of the foregoing reasons and because of the increasing concerns over the quality of health care, the general assembly finds that a system should be established to provide public access to information about certain health care providers and managed care organizations in this state.

(b) For the purposes of this act, the term "provider" or "health care provider" means a physician, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 6; osteopathic physician, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 9; chiropractor, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 4; dentist, regulated

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pursuant to Tennessee Code Annotated, Title 63, Chapter 5; podiatrist, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 3; optometrist, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 8; dietician or nutritionist, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 25; physician's assistant, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 19; respiratory care therapist, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 6; pharmacist, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 10; and a certified nurse practitioner, as such nurses are regulated pursuant to Tennessee Code Annotated, Section 63-7-123.

SECTION 3. There is hereby created in the department of health a consumer health care data center, which shall consolidate, manage and disseminate the information collected by entities of the department of health and the department of commerce and insurance as required by this act.

SECTION 4. When collecting information or compiling reports intended to compare individual health care providers, the commissioner of health shall require that:

(1) Provider organizations which are representative of the target group for profiling shall be meaningfully involved in the development of all aspects of the profile methodology, including collection methods, formatting and methods and means for release and dissemination;

(2) The entire methodology for collecting and analyzing the data shall be disclosed to all relevant provider organizations and to all providers under review;

(3) Data collection and analytical methodologies shall be used that meet accepted standards of validity and reliability;

(4) The limitations of the data sources and analytic methodologies used to develop provider profiles shall be clearly identified and acknowledged, including, but not limited to, the appropriate and inappropriate uses of the data;

(5) To the greatest extent possible, provider-profiling initiatives shall use standard-based norms derived from widely accepted, provider-developed practice guidelines;

(6) Provider profiles and other information that have been compiled regarding provider performance shall be shared with providers under review prior to dissemination; provided, however, that opportunity for corrections and additions of helpful explanatory comments shall be provided prior to publication; and, provided, further, that such profiles shall only include data which reflect care under the control of the provider for whom such profile is prepared;

(7) Comparisons among provider profiles shall adjust for patient care-mix and other relevant risk factors and control for provider peer groups, when appropriate;

(8) Effective safeguards to protect against the unauthorized use or disclosure of provider profiles shall be developed and implemented;

(9) Effective safeguards to protect against the dissemination of inconsistent, incomplete, invalid, inaccurate or subjective profile data shall be developed and implemented; and

(10) The quality and accuracy of provider profiles, data sources and methodologies shall be evaluated at least annually.

SECTION 5. (a) Each board regulating a provider, as defined in Section 2(b), shall collect the following information and provide to the department of health in order for the department to create individual profiles on licensees, in a format created by the department that shall be available for dissemination to the public:

(1) A description of any criminal convictions for felonies and serious misdemeanors as determined by the board, within the most recent ten (10) years. For the purposes of this subsection, a person shall be deemed to be convicted of a crime if such person pleaded guilty or was found or adjudged guilty by a court of competent

jurisdiction. Misdemeanor convictions later expunged by a court of competent jurisdiction shall be stricken from the provider's profile.

(2) A description of any charges to which a provider pleads nolo contendere or where sufficient facts of guilt were found and the matter was continued without a finding by a court of competent jurisdiction;

(3) A description of any final board disciplinary actions within the most recent ten (10) years;

(4) A description of any final disciplinary actions of licensing boards in other states within the most recent ten (10) years;

(5) A description of revocation or involuntary restriction of hospital privileges for reasons related to competence or character that have been taken by the hospital's governing body or any other official action of the hospital after procedural due process has been afforded, or the resignation from or nonrenewal of medical staff membership or the restriction of privileges at a hospital taken in lieu of or in settlement of a pending disciplinary case related to competence or character in that hospital, all as taken pursuant to procedures promulgated by the board for licensing health care facilities. Only cases which have occurred within the most recent ten (10) years shall be disclosed by the department of health to the public;

(6) All medical malpractice court judgments and all medical malpractice arbitration awards in which a payment is awarded to a complaining party during the most recent ten (10) years and all settlements of medical malpractice claims in which a payment is made to a complaining party within the most recent ten (10) years. Each provider licensing board shall set by rule adopted pursuant to Tennessee Code Annotated, Title 4, Chapter 5, a threshold amount below which judgments or settlements shall not be reportable; provided such thresholds shall not exceed the lesser of seventy-five thousand dollars (\$75,000), or a median of settlements in the last ten (10) years

relative to that profession. Dispositions of paid claims shall be reported in a minimum of three (3) graduated categories indicating the level of significance of the award or settlement. Information concerning paid medical malpractice claims shall be put in context by comparing an individual licensee's medical malpractice judgment awards and settlements to the experience of other providers within the same specialty. Information concerning the existence of a court-sealed settlement shall be reported in cases involving such a settlement. Information concerning all settlements shall be accompanied by the following statement: "Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the provider. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred." Nothing herein shall be construed to limit or prevent the department of health from providing further explanatory information regarding the significance of categories in which settlements are reported.

Pending malpractice claims shall not be disclosed by a board to the public. Nothing herein shall be construed to prevent a board from investigating and disciplining a licensee on the basis of medical malpractice claims that are pending.

(7) Names of medical schools or professional and training schools and dates of graduation;

(8) Graduate medical education or other graduate-level training;

(9) Specialty board certification;

(10) Number of years in practice;

(11) Names of the hospitals where the licensee has privileges;

(12) Appointments to medical school faculties and indication as to whether a licensee has a responsibility for graduate medical education within the most recent ten (10) years;

- (13) Information regarding publications in peer-reviewed medical literature;
- (14) Information regarding professional or community service associations, activities and awards;
- (15) The location of the licensee's primary practice setting;
- (16) The identification of any translating services that may be available at the licensee's primary practice location;
- (17) An indication of which managed care plans in which the licensee participates;
- (18) An indication of TennCare plans in which the licensee participates; and
- (19) No information that is otherwise privileged under Title 63, and which is generated by any peer review program, provider health program, or impaired professionals program operated or administered by a provider association or foundation that such association has created for peer review purposes, shall be included in any profile unless such information is not contemplated by the particular Title 63 statute as being privileged.

(b) Each board shall provide individual licensees with a copy of their profiles prior to release to the public. A licensee shall be provided a reasonable time to correct factual inaccuracies that appear in such profile.

(c) A provider may elect to have his or her profile omit certain information provided pursuant to subdivisions (12) to (14), inclusive, concerning academic appointments and teaching responsibilities, publications in peer-reviewed journals and professional and community service awards. In collecting information for such profiles and in disseminating such profiles, each board shall inform providers that they may choose not to provide such information required pursuant to subdivision (12) to (14), inclusive.

(d) The department of health shall develop formats for dissemination of such information to the public, which at a minimum shall include electronic media, including the World Wide Web of the Internet, CD-ROM, and a toll-free telephone line.

SECTION 6. The clerk of any court in which an unlicensed provider is convicted of holding himself out as a licensed provider shall, within one (1) week thereafter, report the same to the board of medical examiners together with a copy of the court proceedings in the case.

In the instance where a provider pleads nolo contendere to charges or where sufficient facts of guilt were found and the matter was continued without a finding by a court of competent jurisdiction, such clerk shall, within one (1) week thereafter, report the same to the board of medical examiners or other appropriate licensing board together with a copy of the court proceeding in the case.

SECTION 7. The department of health, in implementing the provisions of Section 5 shall not disseminate a provider profile by electronic media, including the World Wide Web of the Internet or on CD-ROM or toll-free telephone line before May 1, 1999. The department shall conduct a study of the impact of publication of provider profiles by electronic media on the personal safety of providers and their families, and shall report its findings to the government operations committee on or before October 1, 1998. The department shall include in such report a sample profile designed with safeguards recommended by the department pursuant to the aforementioned study. No later than January 1, 1999 and after public hearing, the board shall promulgate regulations to eliminate, to the extent practicable, the possibility that certain information contained in such profiles may jeopardize that personal safety of providers and their families.

SECTION 8. The department of health shall assess boards of providers and the boards of other entities regulated under this act, including the board of pharmacy, for the costs reasonably associated with providing the services and information pursuant to this act.

SECTION 9. No balance of funds for any board regulating a provider subject to the profiling requirements of this act may be transferred to the general fund in any fiscal year until the expenses for implementing the profiling activities of this act have been met.

SECTION 10. (a) Managed care organizations regulated pursuant to Tennessee Code Annotated, Title 56, Chapter 32, shall provide an accurate listing of provider information as required by this act to the consumer health care data center of the department of health.

(b) A managed care organization shall report any addition or deletion of a provider from its panel of contracted members within seven (7) days of the change. The center shall cross-reference the change with the existing provider profile within seven (7) days of receipt of the information.

(c) The department of commerce and insurance, to the extent to which it already collects the data required by this act, shall forward the existing data and all subsequent data to the center in such manner as the commissioner of health shall direct after consultation with the commissioner of commerce and insurance.

SECTION 11. (a) The annual report required by Tennessee Code Annotated, Section 56-32-210(4), shall be made available to consumers by the department of health through the World Wide Web of the Internet or on CD-ROM and a toll-free telephone line.

(b) The information which the department of health shall disseminate shall include, but not be limited to:

- (1) A description of the complaint system;
- (2) The total number of complaints handled through such complaint system and a compilation of the causes underlying the complaints filed since January 1, 1998;
- (3) The ratio of the number of complaints received to the total number of enrollees, reported by the type of complaint and category of enrollee since January 1, 1998;



(4) The ratio of the number of adverse decisions issued to the number of complaints received, reported by category since January 1, 1998;

(5) The ratio of the number of prior authorizations denied to the number of prior authorizations requested reported by category since January 1, 1998;

(6) The ratio of the number of successful enrollee appeals to the number of appeals filed since January 1, 1998; and

(7) The number, amount and disposition of malpractice claims made by enrollees of the organization that were settled since January 1, 1998.

(c)The profile of a managed care organization maintained by the department shall also include:

(1) The number of years in existence;

(2) The aggregate information on the numbers, types, board certification status, and geographic distribution of primary care providers and specialists;

(3) The percentages of premium dollar allocated to care, administrative cost, profit, surplus, and other relevant cost categories as determined by the commissioner;

(4) The certification and accreditation status of the organization;

(5) Measures of quality and consumer satisfaction as determined by the commissioner of health which shall be comparable among the organizations;

(6) Composition of the provider network;

(7) Identification of those providers accepting new patients;

(8) Procedures governing access to specialists and emergency services; and

(9) Disenrollment rates which have been adjusted for involuntary disenrollment.

SECTION 12. (a) Hospitals regulated pursuant to Tennessee Code Annotated, Title 68, Chapter 11, shall provide an accurate listing of information as required by this act to the consumer health care data center of the department of health.

(b) The information which the department of health shall disseminate shall include, but not be limited to:

- (1) The corporate form of the facility, including whether the facility is publicly or privately owned, whether the facility is not-for-profit or for-profit, the nature of the ownership and management, and its affiliations with other corporate entities;
- (2) Health care plans accepted by the hospital;
- (3) Accreditation status; and
- (4) The specialty programs which meet the guidelines established by the specialty societies or other appropriate bodies as determined by the commissioner of health.

SECTION 13. No provision of this act shall be construed as restricting the status of any record as a public record for the purposes of Tennessee Code Annotated, Title 10, Chapter 7.

SECTION 14. The commissioner of health is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 15. This act shall take effect upon becoming a law, the public welfare requiring it.